Supreme Court, U.S.
FILED
APR 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

No.:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987.

---

MASHUQ A. QURESHI, M.D. Petitioner

v.

NATIONAL SAVINGS AND TRUST COMPANY
SECURITY NATIONAL BANK
TELEPHONE CORPORATION OF AMERICA Respondents

---

Petition for writ of certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

---

Mashuq A Qureshi,MD Pro Se
611 So.Carlin Springs Rd.
Suite 104
Arlington, Virginia 22204
(703) 379-8030

## QUESTIONS PRESENTED FOR REVIEW

Regarding NS&T and SNB

1. If there was no endorsement of the payee on the check, could NS&T and SNB pay for the check?

2. Is NS&T not liable for breach of contract to its customer the petitioner in paying for the check, which lacks endorsement of the payee?

Regarding TELCOA

1. Was the petitioner not a secured party with priority on the Telephone equipment?

2. Was the petitioner not a Bona fide purchaser for value of the equipment from Mr. Gordon?

3. Is petitioner not entitled to interest on the judgment from the date Telcoa wrongfully repossessed the equipment?

4. Was Telcoa who converted petitioner's equipment on false pretences not liable to make the petitioner whole for his loss of

$47,500 with interest?

Parties

Petitioner: Mashuq A. Qureshi, M.D.

Respondents:

1) National Savings & Trust Company.

2) Security National Bank.

3) Telephone Corporation of America.

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## OPINION BELOW

The Court of appeals entered it's memorandum decision on November 30, 1987, affirming District Court's order of February 10, 1983 for petitioner's claim against National Savings & Trust Company (Herein after NS&T), judgment on the jury verdict entered July 26, 1984 for Security National Bank (Herein after SNB), judgment on the jury verdict entered August 30, 1985 for Telephone Corporation of America (Herein after Telcoa). A copy of the memorandum decision is attached as appendix A. The court denied petitioner's petition for rehearing and suggestion for rehearing en banc on January 28, 1988. A copy of the order is attached as appendix B.

## JURISDICTION

On November 30, 1987 the Court of Appeals entered judgment against the petitioner affirming District Court's orders dismissing petitioners claims against NS&T, SNB and Telcoa. (App.A). On January 28, 1988, petitioner's petition for rehearing and suggestion for rehearing en banc was denied

(App. B)

The jurisdiction of this Court is invoked under Title 28 U.S. Code section 1254 (1).

## CONSTITUTION AND STATUTES INVOLVED

United States Constitution, amendment V:

Nor shall any person... be deprived of life, liberty or property, without due process of law. Ucc 2-403, 3-302, 4-207,9-301,312

## STATEMENTS OF THE CASE (App.3)

Regarding NS&T and SNB:-

On April, 1981, the petitioner issued a check for $20,000.00 drawn on his NS&T account for Medac General partnership II the payee. The check was not endorsed by the payee and did not get credited into the account of the payee. SNB credited the check to an entity, which was not the payee. NS&T charged the petitioner's account, it's customer for $20,000.00 simply because of the warranty of SNB. NS&T was aware that the endorsement of the payee on the check was missing. NS&T did not restore the petitioner's account for the amount of the check.

The district court dismissed petitioner's claim against NS&T on February 10, 1983 for failure to state a claim on which relief may be granted. The petitioner lost his claim against SNB on July 26, 1984 pursuant to a jury verdict.

Regarding Telcoa:-

On April 1, 1981, petitioner purchased a telephone equipment from Mr. Gordon for $47,500.00 and entered in a sale lease back agreement. After about 3 months, Mr Gordon absconded. Telcoa repossessed the equipment from Mr. Gordon's premises maintaining that they had sold the equipment to Mr. Gordon, but were not paid for it.

In fact, Telcoa was paid $24,000.00 for the equipment by Mr. Gordon, except for $800.00 + taxes. Telcoa had not filed under u.c.c. it's security interest. However, the petitioner's security interest was duly filed under the u.c.c. with priority,ucc 3-301 & 3-312. The petitioner was awarded judgment against

Telcoa of $17,440.00 pursuant to jury verdict on August 30, 1985. Petitioner's claim for interest to date from June 1981, the date of repossession of the equipment was denied by the District Court.

The appeals Court affirmed the findings of the District Court on November 30, 1987. The petitioner's petition for rehearing and suggestion for rehearing en banc were denied on January 28, 1988. Federal jurisdiction was diversity based.

FOR GRANTING THE WRIT/REASONS

Regarding NS&T and SNB:-

1. SNB did not find the endorsement of the payee on the check. Therefore SNB was not a holder in due course. Therefore S.N.B. was in violation of u.c.c. 4-207 & u.c.c. 3-302.

2. NS&T, the drawee, should not have paid for the check simply because SNB warranted it, where there was no endorsement of the payee on the check. NS&T was therefore liable to the petitioner, it's customer for breach of contract.

3. The decision of the Appeals Court is in conflict with the Fifth Court:-

a) First City Nat. Bank v. Federal Deposit Insurance Co. 782F. 2d 1344 (5th cir. 1986). NS&T should have claimed against SNB for its breach of warranty for lack of endorsement of the payee. In effect both SNB and NS&T have converted the appellant's check.

b) Perini Corp. v. First Nat. Bank 553 F.2d 398 (5th cir. 1977).

The endorsement of payee was required to satisfy statutory warranty of good title.

Based upon the above reasons, petitioner should have had judgment against both NS&T and SNB.

Regarding Telcoa:-

1. Telcoa which did not have a filed security interest on the equipment wrongfully repossessed the equipment of the petitioner who had a perfected security interest,ucc 9-301,312. Telcoa converted the equipment of the petitioner for which petitioner had paid $47,500.00 and had set it up in sale lease

back. Telcoa should make the petitioner whole for his loss proximately cause by Telcoa's actions.

2)Petitioner was a Bona fide purchaser of equipment for value under u.c.c. 2-403, hence petitioner had superior rights on the equipment than Telcoa.

3) Petitioner was entitled to award of interest by the court on the judgment from the date of repossession of the equipment by Telcoa in June 1981.

4) Telcoa asserted false-hood when it stated that it had not received $24,000.00 on the equipment from Mr. Gordon.

5) The equipment was not consumer goods. It was business equipment. Telcoa could not repossess equipment without Court's intervention.

Based on the above reasons, Telcoa should have been made to pay to the petitioner $47,500.00 with interest to date from June 1981.

## CONCLUSION

Under rule 52 (a) of the Fed. T. civ. p,

the Appeals Court should have found for the petitioner, because the findings of fact by the district Court were clearly in error. There was misapplication of the code and case law. There is conflict in the circuits. Therefore the petitioner requests, that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia.

Respectfully submitted,

Mashuq A. Qureshi, M.D.

petitioner Pro Se

611 South Carlin Springs Rd.

Suite 104

Arlington, Virginia 22204

Dated 04/27/88.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 87

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS AND TRUST COMPANY

et al

## PROOF OF SERVICE

The petitioner certifies under the penalty of perjury that on 04/27/88, 3 copies of this petition was mailed postage prepaid first class to:

1) PAUL BENNET BRAN ESQ.
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3) STANLEY LIPSHULTZ ESQ.
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8630 Fenton Street
Silver Spring, Maryland 20910

MASHUQ A. QURESHI, M.D.
Petitioner
611 So. Carlin Springs Rd.
Arlington, Virginia 22204
(703) 379-8030

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-7041 September Term, 1987

C.A. No. 82-03673

MASHUQ A. QURESHI, M.D.,

Appellant

v.

NATIONAL SAVINGS & TRUST COMPANY, et al.

AND CONSOLIDATED CASE

BEFORE: Mikva, Edwards and Bork,

Circuit Judges

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

J U D G M E N T

This case was considered on the record on appeal from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for a published opinion.

APPENDIX A.

See D.C. Cir. Rule 14 (i). For the reasons set forth in the accompanying memorandum, it is

ORDERED and ADJUDGED by the court that the district court order of February 10, 1983, be affirmed; the judgment on the jury verdict entered July 26, 1984, be affirmed; and the judgment on the jury verdict entered August 30, 1985 be affirmed.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

No. 86-7041 -- Qureshi v. NS&T et al.

MEMORANDUM

Mashuq A. Qureshi, M.D., proceeding pro se, appeals from a district court order adjudicating three claims against three parties. His case against National Savings

and Trust Co. (NS&T) was dismissed on February 19, 1983, for failure to state a claim on which relief may be granted. On July 26, 1984, a judgment on the jury verdict was entered in favor of Security National Bank (SNB). On August 30, 1985, a judgment on the jury verdict awarding Qureshi $17,440 was entered against Telephone Company of America (Telcoa). Telcoa also cross-appeals from the judgment entered in Qureshi's favor.

The claims all arise from essentially the same business transaction. Qureshi, seeking to invest in tax shelters, brought telephone equipment from Richard Gordon and then leased the equipment back to Gordon in a "sale-leaseback" agreement. Gordon had bought the equipment from Telcoa for $24,800 plus $1488 tax and Telcoa reserved title to the equipment pending full payment. Qureshi, however, paid Gordon $47,500 for the equipment.

Qureshi also entered into a partnership with Gordon in furtherance of the tax shelter plan. Qureshi wrote a $20,000 check on his NS&T account, payable to Medac General Partnership II, to purchase two shares in Medac, a partnership which Gordon controlled. Gordon endorsed the check with the notation "Pay to the order of Medtronics, Inc.," signed his name and deposited the check in his Medtronics account at SNB. SNB presented the check to the payor bank NS&T for collection. NS&T verified the authenticity of Qureshi's signature on the check land debited Qureshi's account by $20,000. At the time, Medac did not have an account at NS&T, but one was opened six weeks later.

Gordon neither made lease payments to Qureshi under the sale-lease back attangement, nor delivered to Qureshi the two shares in the Medac partnership. Gordon thereafter absconded and by 1983 was reportedly in federal prison in Connecticut.

Telcoa, upon learning of Gordon's absence, repossessed and resold the telephone equipment. Qureshi then sought to recover the money lost in the deals by bringing actions against NS&T, SNB and Telcoa.

1. Claims against NS&T

Qureshi argues on appeal that NS&T had a duty to ensure that the check was properly payable before debiting his account, and NS&T breached that duty when it honored the check. The district court found that NS&T was entitled to rely on the warranty of SNB, the presenting bank, that the endorsement on the check was proper. See D.C. Code 28:4-207(1) (1981). The district court dismissed Qureshi's action against NS&T for failure to state a claim on which relief could be granted. We find this to be the correct application of section 4-207. Therefore, the district court decision is affirmed for the reasons set forth in that

court's order and memorandum filed February 10, 1983.

II. Claims against SNB

Qureshi raises three issues relating to SNB: there is error in the jury's finding that SNB did not violate section 4-207 when it accepted Gordon's "unauthorized endorsement" without ascertaining that Gordon acted with authority on behalf of the partnership; the trial court erred in excluding certain evidentiary material as irrelevant; and the trial court erred in instructing the jury that the endorsement is presumed valid.

None of Qureshi's claims against SNB warrants reversal of the judgment on the verdict. Findings of fact may not be set aside unless clearly erroneous. Fed. R. Civ. P. 52(a); see Cuddy v. Carmen, 762 F.2d 119, 123-24 (D.C. Cir. 1985); Case v. Morrisette, 475 F. 2d 1300, 1307 (D.C. CIr. 1973). In this case, the jury's finding that a

partnership existed and that Gordon was authorized to sign on behalf of the partnership does not even approach the clearly erroeneous threshold. As to the evidentiary claims, the district court properly found that the excluded material was irrelevant. Finally, Qureshi asserts nothing to show error in the instruction that the signature is accorded a presumption of validity; under applicable law such an instruction is proper. See D.C. Code 28:3-307 (1981) (when "effectiveness of signature is put in issue, the signature is presumed to be genuine or authorized")

III Claim against Telcoa

Qureshi claims he had a security interest in the telephone euqipment, while Telcoa did not, and therefore Telcoa's repossession and resale of the equipment amounted to conversion. Qureshi also alleges that Telcoa perjured itself when it denied receiving from Gordon the $24 000 to purchase the equipment. The

jury found that Telcoa had a right to repossess and resell the telephone equipment, but should have applied the proceeds to satisfy both the outstanding debt Gordon owed on the equipment and Telcoa's costs of repossession and resale. Accordingly, the jury awarded Qureshi $17,500. On appeal, Qureshi seeks "to be made whole" with and award of $47,500, the amount borrowed to purchase the equipment, and also asks for interest at 2 percent above the prime rate and reimbursement of various fee. Applying the clearly erroneous standard of Fed. R. Civ. P. 52, Qureshi fails to demostrate clear error in the finding that Telcoa had a right to repossess and resell the equipment, i.e., that Telcoa had a superior security interest and thus did not "convert" the property. Moreover, Qureshi did not raise the perjury issue at trial and cannot raise the issue for the first time on appeal.

District of Columbia v. Air Florida, Inc.,

BEST AVAILABLE COPY

750 F.2d 1077, 1084-85 (D.C. Cir. 1984). The judgment on the jury verdict is therefore affirmed.

IV Telcoa's Cross Appeal

Telcoa does not challenge the district court's determination of the respective interests of the perties, but argues on cross appeal that the amount of the verdict was contrary to the weight of the evidence and seeks a remittitur for an award of #3952, or a new trial on the damages issue. Telcoa seems to make a ldual argument: (1) the jury should have been instructed to compute the value of the hardware separately from the value of the intangibles, and (2) the jury arrived at an award that was not reasonable. Neither argument suffices to give Telcoa the relief sought.

Telcoa did not object to the jury instruction that the jury consider the value of the "telephone equipment" before the jury began deliberating. Therefore, according to

Fed. R. Civ. P. 51, it cannot assign error to the instructions. Further Telcoa bears a heavy burden to establish that the jury award is so far beyond the realm of reason that it requires correction. Fields v. Washington Metropolitan Area Transit Authority, 743 F.2d 890, 895 (D.C. Cir. 1984) (award disturbed only when so grossly excessive that allowing to stand is abuse of iscretion); Carter v. Duncan-Huggins,Ltd., 727 F.2d 1225, 1238-39 (D.C. cir. 1984) (award must be within reasonable range and jury cannot speculate or engage in improper activity); Taylor v. Washington Terminal Co. 409 F.2d 145, 148 (D.C.Cir.) (award must be contrary to all reason before remittitur or new trial warranted), cert. denied, 396 U.S. 835 (1969). The jury was instructed to consider the value of the telephone equipment. The award, given that instruction, is not grossly excessive or contrary to all reason and therefore must stand.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA COURT

No. 86-7041 September Term, 1987

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS & TRUST CO.,etal.

BEFORE: MIKVA, EDWARDS and BORK,

Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, it is ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:

CONSTANCE L. DUPRE,

CLERK

BY:

Robert A. Booner

Deputy Clerk

APPENDIX B.

Chief Judge Wald did not participate in this order.

Circuit Judge Bork did not vote in this matter.

APPENDIX B.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-7041 September Term, 1987

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS & TRUST CO.,et al.

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D. H. Ginsburg and Sentelle, Circuit Judges

O R D E R

Appellant's suggestion for rehearing en banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon.

ORDERED, by the Court en banc, that the suggestion is denied.

Per Curiam

FOR THE COURT:

CONSTANCE L. DUPRE, CLERK

BY: Robert A.Booner, Deputy Clerk

APPENDIX B.

APPENDIX 3

ucc 2-403: (1) A person with voidable title has power to transfer a good title to a good faith purchaser for value.

ucc 3-302: (1) A holder in due course is a holder who takes intrument a) for value. b) in good faith.

ucc 4-207: (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor bank who in good faith pays or accepts the items that:
a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title.

APPENDIX 3

ucc 9-301: (1) An perfected security interest is subordinate to the rights of (a) Persons entitled to priority under section 9-312.

ucc 9-312: (4)(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral on the time the security interest is first perfected.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

87 1899

No.:

Supreme Court, U.S.
FILED
APR 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987.

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MASHUQ A. QURESHI, M.D. Petitioner

v.

NATIONAL SAVINGS AND TRUST COMPANY
SECURITY NATIONAL BANK
TELEPHONE CORPORATION OF AMERICA | Respondents

---

Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 1

MASHUQ A. QURESHI, M.D.,

Plaintiff,

v.

NATIONAL SAVINGS & TRUST COMPANY, et al.,

Defendants.

Civil Action No. 82-3673

FILED FEB.10,1983

MEMORANDUM AND ORDER

This matter is before the court on the motion of defendant NS&T Bank to dismiss for failure to state a claim upon which relief can be granted. For the purposes of decinding such a motion, the court must take as true all the allegations of the complaint. Plaintiff alleges that he is the victim of a scheme which defrauded him of some

$67,500. Although it is not immediately clear from the pleadings, plaintiff appears in fact to be complaining about two separate transactions.

1. Sale-leaseback of telephone equipment.

Plaintiff, a physician, was looking for tax shelters when he engaged in a questionable transaction in which he bought telephone equipment from one Richard J. Gordon for $47,500 and then promptly leased the equipment back to Gordon. The purchase price was financed by a personal loan from NS&T Bank to plaintiff, secured by the equipment. Gordon shortly thereafter skipped town, and is now reportedly in federal prison in Connecticut.

Plaintiff argues that the bank is liable to him for the amount of the loan because the bank knew about Mr. Gordon's shady background and had a duty to warn

plaintiff about doing business with Gordon. The Bank denies any such knowlege and insists that, in any event, it owes no fiduciary duty to plaintiff.

It is well-settled that the relationship between a depositor and his bank is usually one of debtor-creditor, and creates no fiduciary relationship.

Bank of Marin v. England, 385 U.S. 99 (1966). Though plaintiff may be chagrined that he was no better protected by the bank at which he has been a depositor for twelve'years, the bank owed him no legal duty to do so. Accordingly, plaintiff's claims against NS&T for the $47,500 loan must be dismissed.

2. $20,000 check to Medac General Partnership II

On or about April 1, 1981, plaintiff wrote a check for $20,000 to the order of

"Medac General Partnership II", drawn on the account of plaintiff with NS&T. "Medac II" was a partnership controlled by Mr. Gordon. Plaintiff gave the check to Gordon, ostensibly to purchase shares in Medac II. Instead, Gordon endorsed the check over to "Medtronics, Inc.", yet another Gordon creation, and deposited the check with the Medtronics account at Security National Bank, a co-defendant. Security National Bank then, of course, presented the check to the payor bank, NS&T, for collection. After verifying the authenticity of plaintiff's signature, NS&T debited plaintiff's account in the amount of $20,000.

Plaintiff argues strenuously that both banks are liable to him in the full amount of the check for having accepted what he terms the improper endorsement of Mr. Gordon on the check he intended to go to Medac II,

Medac II, argues plaintiff, did not even have a bank account with NS&T until some six weeks later.

At least with respect to NS&T, plaintiff again misconstrues the obligation of the bank. As payor bank, NS&T had only to verify the authenticity of the signature of the drawer of the check, plaintiff. NS&T was entitled to rely on the warranty of Security National Bank that the endorsement on the check was proper.

See D.C. Code §28:4-207 (1981). The existance or absence of a Medac II account at NS&T, at whatever time, is irrelevant to this motion. Accordingly, plaintiff's claims for the $20,000 lost on the check to R.J. Gordon must also be dismissed.

In accordance with the foregoing, it is this 10th day of February, 1983,

ORDERED that the motion of defendant NS&T Bank to dismiss for failure to state

a claim upon which relief may be granted is granted; and it is further

ORDERED that plaintiff's claims against defendant NS&T Bank are hereby dismissed.

Thomas Flannery

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 2

MASHUQ A. QURESHI, M.D.

Plaintiff

vs.

#2: SECURITY NATIONAL BANK

Defendant

FILED JUL.26,1984

Civil No. 82-3673

Filed Jul.26,1984

James F.Davey, Clerk

JUDGMENT ON THE VERDICT

(For Defendant)

This cause having been tried by the Court and a Jury, before the Honorable Thomas A. Flannery, Judge presiding, and the issues having been duly tried and the Jury having rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff Mahuq A. Qureshi, M.D.

take nothing on the complaint against the defendant Security National Bank

and that the said defendant (s) have and recover costs from the said plaintiff.

JAMES F. DAVEY, Clerk

Dated: July 26, 1984 By James F. Davey

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| MASHUQ A. QURESHI, M.D. | Filed |
| Plaintiff | August 30,1985 |
| TELEPHONE CORPORATION OF AMERICA | James F.Davey, |
| AKA TELCOA | Clerk |
| Defendant | CIVIL |
| | NO. 82-3673 |

Exhibit 3

JUDGMENT ON THE VERDICT

(For Plaintiff)

This cause having been tried by the Court and a Jury, before the Honorable THOMAS A. FLANNERY, Judge presiding, and issues having been duly tried and the Jury having duly rendered its verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff MASHUQ A. QURESHI, M.D.

have and recover of and from the defendant TELEPHONE CORPORATION OF AMERICA, AKA TELCOA the sum of Seventeen Thousand,Four Hundred Forty Dollars $17,440.00,

JAMES F. DAVEY, clerk

Dated: 08/30/85 By: _____

Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 4

MASHUQ A. QURESHI, M.D.,

Plaintiff,

v.

TELEPHONE CORPORATION OF AMERICA,

Defendant.

Civil Action No. 82-3673

FILED OCT.29, 1985

M E M O R A N D U M

This matter comes before the court on defendant's motion for judgment notwithstanding the verdict and in the alternative, for a new trial or remittitur, or plaintiff's motion for interest, costs, attorney fees, and investigation fees, and on defendant's motion to strike plaintiff's motion. For the reasons stated below, all the above motions are denied.

I. Background

This case came to trial in August of 1985. On the evidence presented, defendant sold various items to Richard J. Gordon, including a MITEL SX-200 telephone equipment system pursuant to a conditional sales contract that reserved title in the equipment with defendant until full payment was made.

Subsequently, plaintiff engaged in a sale lease-back arrangement with Gordon whereby plaintiff bought the MITEL SX-200 telephone system from Gordon and then leased it back to Gordon for use in Gordon's office. After Gordon's business fell apart, defendant repossessed, refurbished and resold the telephone equipment.

Plaintiff claimed that defendant's repossession of the telephone equipment from Gordon was an unlawful conversion of plaintiff's property. Defendant claimed that

as secured party, it had a superior interest in the proceeds received from the resale, which could be applied not just to the debt on the MITEL SX-200, but to an "open account" held by Gordon with defendant.

To establish defendant's right to the telephone equipment, various facts were brought out at the trial concerning the existence of defendant's security interest, security agreement, and type of account with Gordon. To establish plaintiff's right to the telephone equipment, various facts were brought out about plaintiff's purchase of the telephone equipment and plaintiff's relationship with Gordon.

After a week of trial, the court issued instructions to the jury, the jury deliberated, and a verdict was returned awarding $17,440 to plaintiff.

II. Discussion

Defendant seeks a different judgment, a new trial, or a remittitur of the amount awarded plaintiff. Most of defendant's arguments in favor of a new judgment or trial, however, are misplaced in that they attempt to show that by law defendant had a security interest superior to plaintiff. Such a finding is unnecessary given the jury's verdict. As shown by the verdict form, the jury found that defendant did have a right to repossess and resell the telephone equipment. The verdict form read:

> Do you find that TelCOA had a right to repossess and resell the telephone equipment, but only to apply the proceeds of the resale to both the outstanding debt Gordon owed on the MITEL SX-200 and telCOA's costs in repossession and resale?
>
> Yes X
>
> No _____

While it is not for this court to determine the process of deliberation that led to this conclusion, obviously the jury found that defendant had some sort of security interest in the equipment that was superior to any interest plaintiff had in preventing defendant's repossession.

The crux of defendant's concern, therefore, must be with the jury' finding that the security interest only allowed defendant to apply the proceeds of the resold equipment to the outstanding debt on <u>that</u> equipment (plus costs in repossession and resale), and not to the "open account" defendant sought to prove at trial. Close review of the evidence presented at trial shows that, viewed in a light most favorable to plaintiff, there is a reasonable basis for the jury's finding.

As a matter of law, the "article two" security interest shown by defendant to

exist arose from the sale of the MITEL SX-200; that security interest secured any outstanding debt on that telephone equipment, not on any cumulative debt owed by Gordon to defendant. The parties agreed that defendant initially sold the telephone equipment to Gordon for $26,288. Plaintiff introduced evidence that Gordon paid to defendant accepted from Gordon $24,000 on that debt (Plaintiff's Exhibit 19). Evidence was also heard from John Eaglin, director of operations for defendant, that repossession costs were approximately $800-$1,000, refurbishing costs were approximately $4,700-$4,800, and installment costs were approximately $7,300-$7,400. The jury, after deducting the debt still owed defendant on the equipment, and after weighing the reasonableness of the costs of repossessing, refurbishing and reselling

the telephone equipment, decided that, after completing the lawful satisfaction of its security interest, defendant was enriched at plaintiff's expense in the amount of $17,440.

Returning this surplus to plaintiff is in complete compliance with the law in this district regarding a secured party's right to dispose of collateral after default. D.C. Code Ann. §28:9-504. While the jury's exact computation of this amount must remain uncertain, it cannot be said as a matter of law that the jury was clearly in error in determining this amount.

Defendant's specific objection ot the second jury instruction is also misplaced and insufficient grounds for a new judgment or new trial. It was clear to the jury that since the debt was not yet fully paid, no valid title had passed from defendant to Gordon. It was also clear (through the

answer of the court to a question posed by the jury during deliberation) that plaintiff himself had no security interest in the property.

Therefore, it was necessary to indicate to the jury that absent a security interest by defendant, or after satisfaction of such a security interest, it was still possible for plaintiff to have a claim to the goods under an article two transfer of title pursuant to the voidable title doctrine. D.C. Code Ann. §28:2-403(1). All the ensuing jury instructions dealt with whether a security interest existed, whether a security agreement existed, and what significance such outcomes would have under article nine.

## III. Conclusion

The defendant's motion for judgment notwithstanding the verdict, or in the

alternative, for a new trial or remittitur, is denied.

Plaintiff's motion for interest, costs, attorney fees and investigation is likewise denied. This renders moot defendant's motion to strike plaintiff's motion, and therefore it too is denied.

An appropriate Oder accompanies this Memorandum,

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UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 5

MASHUQ A. QURESHI, M.D.

Plaintiff,

v.

TELEPHONE CORPORATION OF AMERICA

Defendant.

Civil Action

No. 82-3673

FILED

OCT.29, 1985

O R D E R

Upon consideration of defendant's motion for a judgment notwithstanding the verdict, and in the alternative, for a new trial or remittitur, plaintiff's motion for interest, costs, strike plaintiff's motion, the oppositions thereto, and the entire record herein, it is, by the court, this 29 th day of October, 1985,

ORDERED that defendant's motion for judgment notwithstanding the verdict, and in the alternative, for a new trial or

remittitur, is denied; and it is further

ORDERED that plaintiff's motion for interest, costs, attorney fees and investigation fees is denied; and it is further

ORDERED that defendant's motion to strike plaintiff's motion for interest, costs, attorney fees, and investigation fees is denied.

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UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| MASHUQ A. QURESHI, M.D. | Exhibit 6 |
| Plaintiff, | |
| v. | Civil Action |
| RICHARD J. GORDON, et al. | No. 82-3673 |
| Defendants | FILED |
| | AUG. 15, 1986 |

MEMORANDUM OPINION

AND

REPORT AND RECOMMENDATION

This matter comes before the United States Magistrate based on Order of the Court (Flannery, J.), dated December 13, 1985, for a hearing on damages allegedly owed to the plaintiff, Dr. Mashuq A. Qureshi, who has proceeded pro se in this litigation, by Mr. Richard J. Gordon, the Court having entered an Order on December 16, 1985, determining that effective service had been

made on the defendant, Richard J. Gordon, in California, pursuant to 13 D.C. Code §423 et seq. (1981) and ordering the Clerk of the Court to issue a default against Mr. Gordon for his failure to appear and to answer the complaint. 1/

An evidentiary hearing was held before the undersigned United States Magistrate on February 13, 1986. Plaintiff appeared pro se and gave testimony on his own behalf. Also during the hearing the plaintiff produced two (2) additional witnesses and introduced seventeen (17) exhibits. The defendant did not appear personally or through counsel.

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1/ It is noted that the Court referred the matter to the Magistrate even prior to the Clerk entering the default.

The Magistrate has since again reviewed his hearing notes, the exhibits received in evidence and the entire court record. Also extensive legal research has been conducted on the subject of equipment leases and the method for computation of damages for breach thereof of rental payment obligations during theterm of the lease. Based upon this review, the Magistrate enters the following findings of fact and conclusions of law.

For the reasons set forth hereinafter, the Magistrate recommends judgment be entered against the defendant, Richard J. Gordon, and for the plaintiff, in the sum of ONE HUNDRED FIFTY THOUSAND, NINE HUNDRED THIRTY-FOUR DOLLARS AND FOURTEEN CENTS ($150,934.14) as the appropriate quantum of damages in this case as of September 1, 1986.

## GENERAL BACKGROUND

Dr. Mashuq A. Qureshi seeks $67,500 in

damages, plus interest at two (2) percent above the prime rate, punitive damages, as well as legal fees and costs from the defendant Richard J. Gordon, an individual with whon he transacted several business dealings in 1981. 2/ Dr. Qureshi has alleged that Richard J. Gordon had breached two (2) separate and distinct contracts in which they had entered in 1981.

After several unsuccessful attempts to serve Mr. Gordon, who currently resides in California, both certified and registered mail, the Court (Flannery, J.) found that effective service had been made on Mr. Gordon. Thus, on February 6, 1986, the Clerk of the Court entered a default against the defendant, Richard J. Gordon for his failure to answer

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2/ Dr. Qureshi's original complaint was filed against National Savings & Trust Company(NS&T), Security National Bank and Telephone Corporation of America (TELCOA) for their alleged (FN #2...)

the amended complaint (Docket No.141). Thereafter the evidentiary hearing was held on February 13, 1986, pursuant to the Order of the United States Magistrate of January 20, 1986, furnishing notice thereof, which was mailed to Richard J. Gordon, c/o Pacific Financial Institute, Suite #600, 10100 Santa Monica Boulevard, Los Angeles, California, 90067, both by First Class Mail and Certified Mail, return receipt requested, addressee only (Docket NO. 137). The certified letter was returned "notify sender of new address:

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(...FN #2)

involvement in the business dealings between Dr. Qureshi and Richard J. GOrdon. On April 20, 1983, Dr. Qureshi filed an amended complaint, pursuant to an Order of the Court, filed April 13, 1983, to add Richard J. Gordon as a defendant. This report and recommendation concerns on Dr.Qureshi's claims against Richard J. Gordon on the amended complaint.

Pacific Basin Enter

1880 Century Park East #806

Los Angeles, California 90067".

The first class letter was not returned. It may be presumed that it was forwarded by the U.S. Postal Service to the defendant and was received. Cf. Legille v. Dann, 544 F.2d 1 (D.C. Cir.1976).

## FINDING OF FACTS

1. Dr. Mashuq A. Qureshi, who currently resides at 611 South Carlin Springs Road, Arlington, Virginia, testified that in the Spring of 1981, he negotiated several business deals with Mr. Richard J. Gordon, President of "R. J. Gordon Corporation."

2. Dr. Qureshi agreed to purchase two (2) shares in a partnership, the Medac General Partnership II. (Testimony of Dr. Mashuq A. Qureshi). For the purchase of the two (2) partnership shares on or about April 1, 1981,

Dr. Qureshi gave Mr. Gordon a check for $20,000.00, drawn on Dr. Qureshi's MAQ Associates' account at NS&T in Washington, D.C. (Dr. Qureshi's testimony and Plaintiff's Exhibit #1).

3. On or about April 2, 1981, Mr. Gordon deposited the check in an account held by Medtronics, Inc. at the Security National Bank (SNB) in Washington, D.C. as evidenced by the endorsement on the back of the check. (Plintiff's Exhibit #1). Robert D. Willey, Jr., Vice-President of NS&T, also testified that the check was, in fact, deposited in the Medtronics, Inc.'s account at NS&T. Dr. Qureshi testified that Medtronics, Inc. was another company run by Mr. Gordon

4. Security National Bank (SNB) returned the check to NS&T made payment on the check. (Testimony of John N. Littlewood, Senior Vice-President of SNB)

5. Both Dr. Qureshi and Mr. Willey testified that the Medac General Partnership II account was not opened by Richard J. Gordon until May 26, 1981. Mr. Gordon had the sole authority to sign checks for the partnership account as Managing Partner. (Plaintiff's Exhibit #2).

6. Dr. Qureshi testified that shortly thereafter Richard J. Gordon left town and never gave Dr. Qureshi his two partnership shares or any other evidence of a ownership interest in the partnership.

7. Dr. Qureshi and Mr. Gordon also agreed to a sale and lease back arrangement concerning a MITEL SX-200 Computerized Telephone System. (Dr. Qureshi's testimony). According to the terms of the agreement, negotiated in March, 1981, Dr. M.A. Qureshi would purchase the equipment from Richard J. Gordon for $47,500.00 and then Dr. Qureshi would rent the same equipment back

to the "R. j. Gordon Corporation" at $1,400.00 per month plus applicable taxes per month. The equipment lease agreement, dated March 19, 1981, was to run for one-hundred and twenty (120) months. This agreement was signed by Dr. M.A. Qureshi, as lessor, and by R.J. Gordon, President, The R. j. Gordon Corporation, lessee, 4231 42nd Street, N.W., Washington, D.C. 20016. 3/ (Dr. Qureshi's testimony; plaintiff's exhibit #5).

8. On or about April 1, 1981, Dr. Qureshi gave Mr. Gordon a check in the amount of

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3/ The evidence establised that #The R. j. Gordon Corporation" was in fact R. J. Gordon and that he dominated its activities. Thus, the Court is justified in piercing the corporate veil and imposing liability directly on Richard J. Gordon. See Plaintiff's (FN#3...)

$47,500.00. 4/ payable to "The R. j. Gordon Corporation" with the notation, "Purchase: MITEL SX-200 Telephone System", drawn on

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(...FN#3)

Exhibit #17, letter by R. J. Gordon, in which refers to "my company", R. j. Gordon & Company. See also Transcript at trial on August 28,1985, filed July 8, 1986, testimony of Kenneth Schwarzwald of TELCOA at pages 398, 406, 409, 410, 413 and 423A, all indicating that Richard J. Gordon and R. j. Gordon & Company were treated as one and the same.

4/ Plaintiff's Exhibit #12 indicates that the cost of the system was $55,000.00. Exhibit #12, an invoice to Dr. Qureshi, not only purportedly indicates that Dr. Qureshi purchased the system directly from TELCOA instead of from Richard J. Gordon, but also indicates a bill date of January 9, 1981, a date long before the purchase order was even

(FN #4...)

Dr. Qureshi's MAQ Associates' Telephone System", drawn on Dr. Qureshi's MAQ Associates' account at NS&T. (Plaintiff's Exhibit #3).

---

(... FN #4)

signed and before the loan arrangement was set up. (See Plaintiff's Exhibits ## 3, 5 and 17). The document purportedly signed by Joyce Francala, an employee of TELCOA, and by Mr. Gordon, neither of whom testified at the hearing. It thus appears that Mr. Gordon may have represented himself as the agent for Dr. Qureshi, perhaps without his knowledge. Moreover, during the trial against TELCOA in this case, Kenneth Schwarzwald, the Chief Executive Officer fot TELCOA, testified that the document was not signed by an authorized agent of TELCOA and, in fact, Ms. Francella's name was spelled incorrectly on the document. (FN #4 ...)

9. As testified by Mr. Willey and as evidenced by the endorsement on the back of the $47,500.00 check, Mr. Gordon deposited the check into "The R. j. Gordon Corporation" account (Account Number #0614701001) on or about April 2, 1981. (Plaintiff's Exhibit #3). Mr. Willey also testified that NS$T honored the check on or about April 3, 1981.

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(...FN #4)

(Trial Transcript at 397-398, filed July 8, 1986). He further testified that the purchase price by Mr. Gordon was $24,800.00 plus tax. (Trial Transcript at 394, 403, filed July 8, 1986). It appears that TELCOA apparently repossessed the equipment because of a dispute between it and Mr. Gordon over the payment of taxes. Mr Gordon stated in his August 23, 1985 letter that the equipment was sold to Dr.Qureshi at a retail price of $47,500.00.

10. In order to pay Richard J. Gordon, according to the testimony of Dr. Qureshi, he borrowed $47,500 from NS&T, using the Equipment Lease Agreement between himself, as lessor, and the R. j. Gordon Corporation, as lessee, as well as the telephone equipment itself as collateral.
(Dr. Qureshi's testimony; Mr. Willey's testimony and Plaintiff's Exhibits ## 9, 10 and 11).

11. Subsequently, Dr. Qureshi assigned all of his interest in the lease to NS&T for so long as Dr. Qureshi was indebted to the bank. (Dr. Qureshi's testimony; Mr. Willey's testimony and Plaintiff's Exhibit #6).
As required by the Equipment Lease Agreement the R. j. Gordon Corporation consented to the assignment of the lease and agreed to make all one-hundred and twenty (120) payments directly to NS&T. The consent to assignment of the lease was attested to by Ms. Phyllis

H. Archer, Mr. Gordon's former secretary and bookkeeper. (Dr. Qureshi's testimony; Mr. Willey's testimony, Plaintiff's Exhibit #7; and Trial Transcript at 389, filed July 8, 1986).

12. The assignment of the lease was also placed on the public record in Fairfax County, Virginia. (Mr. Willey's testimony; Plaintiff's Exhibit #8). In the financing statement, Dr. Qureshi is designated to secured party and the R. j. Gordon Corporation is designated as debtor (Plaintiff's Exhibit #8). Financing statements were also filed covering NS&T's secured party interest in the lease and the telephone equipment. (Plaintiff's Exhibits ##9 and 10).

13. Although the lease agreement and the consent to assignment of the lease state that R. j. Gordon Corporation's monthly rental payment was $1,400.00, the Equipment Lease Agreement termed this sum as an

"estimated rental." 5/
Dr. Qureshi testified that the true rental payments were $1,050.00 per month. The United States Magistrate accepts the $1,050.00 as the correct payment because the $1,400.00 was an estimated rental amount.

14. The Magistrate closely observed the plaintiff, Dr. Mashuq A. Qureshi, during the hearing on damages and found him to be a credible witness. His testimony was fully consistent throughout and he appeared most sincere in his factual testimony. Further, the exhibits he offered in evidence were fully consistent with his oral testimony and corroborated his testimony in all intrinsic details. Further, the testimony as to how Richard J. Gordon had handled the checks

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5/In the terms and conditions of the lease, it is indicated that the rental amount listed was subject to change under certain conditions. See Plaintiff's Exhibit #5.

in issue and the accounts involved. 6/

CONCLUSIONS OF LAW

1. In light of the defendant Richard J. Gordon's failure ot appear and failure to respond to the pleadings in any manner, default judgment can be properly entered against him. Federal Rules of Civil Procedure, Rule 55. See also Jackson v.

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6/ A copy of this Report and Recommendation shall be sent to Richard J. Gordon at the latest address indicated in the text by both first class mail and certified mail, return receipt requested, deliver to addressee only. Should he object to the findings of fact, the conclusions of law, or the RECOMMENDATION, he shall file OBJECTIONS no later than 4:00 P. M., August 27, 1986.

Beech, 636 F.2d 831 (D.C. Cir. 1980); Al-Kazemi v. General Acceptance & Investment Corporation et al., Dist. Ct., D.C. C.A. No. 85-3465, April 22, 1986, 114 W. L. R. 1577 (August 4, 1986). From Plaintiff's Exhibits ##17 and 17A, and their contents, it is clear that Mr. Gordon has had some notice of this controversy, at least as to the telephone equipment system.

2. The United States Magistrate finds that Dr. Qureshi is entitled to recover $20,000 for defendant Richard J. Gordon's for two (2) shares of the Medac II General Partnership. Under 28 D.C. Code §3302, Dr. Qureshi is entitled to interest from April 1, 1981 to date at the rate of six (6) percent per annum.

Thus, as to this matter, Dr. Qureshi is entitled to $26,400.00 as of August 1, 1986, representing $20,000.00 as principal, plus interest of $1,200 per annum, or $100.00

per month. 7/

3. Further, the United States Magistrate finds that Richard J. Gordon is liable for $91,834.14 due to his breach of the second contract with Dr. Qureshi in failing to make the monthly payments pursuant to the Equipment Lease Agreement at issue in this case. This amount reflects the one-hundred and eighteen (118) rental payments discounted to present value as of the date Dr. Qureshi was entitled to declare a default and accelerate all of the rental payments due under the lease.

According to Term and Condition Number 21 of the Equipment Lease Agreement signed by Richard J. Gordon and Dr. Qureshi,

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7/ If the judgment is not formally entered until September 1, 1986, the sum should be increased by $100.00 so that the total would be $26,500.00.

Plaintiff's Exhibit #5, all rents became due within ten (10) days after the lessee failed to pay any monthly rent. The lease was executed on March 19, 1981. Dr. Qureshi testified that Mr. Gordon made only two (2) payments of $1,050.00 each for a total of $2,100.00. The United States Magistrate concludes that this payment covered the rent for two (2) months, March 19, 1981 through May 19, 1981. With ten (10) day allowance for payment from May 19, 1981, the Magistrate concludes that all rents became due and payable on May 29, 1981. However, for ease of initial calculation the Magistrate will make a minor adjustment and will use the date of June 1, 1981 as the starting date for the computations hereinafter made.

4. If reasonable, rental acceleration clauses in agreements involving equipment leases have been inforced by several courts.

See, e. g. Walter E. Heller & Company v. Video Innovations, Inc., 730 F. 2d 50 (2d Cir. 1984). It is necessary, however, to discount future rentals to present value. See, Heller Financial, Inc. v. Burry, 633 F. Supp. 706 (N.D. I11 1986). See also Lake River Corp. v. Carborundum Co., 769 F.2d 1284, 1290 (7th Cir. 1985) relied on in Heller Financial, Inc., that it would be wrong to accelerate payment of all future rentals without any discount to present value, which would be more in the nature of a penalty, not to be enforced, rather than as liquidated damages. Cf. Davy v. Crawford, 147 F. 2d 574 (D.C. Cir. 1945). In the case at bar, Richard J. Gordon, as a result of piercing the corporate veil of "The R. j. Gordon Corporation" has been determined to be liable for one hundred and eighteen (118) monthly rental payments until March 19, 1991, which would total

$123,900.00. But it would be inappropriate to give Dr. Qureshi the sum of $123,900 now in September, 1986, when had the Equipment Lease Agreement been fully performed, he would not have received this total sum until March 19, 1991. Thus, this sum must be discounted to present value. Since Dr. Qureshi had the right to declare a default as of June 1, 1981, we have chosen that date as the date when all the rent became due and the date to which the $123,900.00 sum should be discounted. Discounting at six (6) percent, compounded, per annum back from March 19, 1991 to June 1, 1981 gives us a present value as of that date of $67,576.38, which is set out in table below:

| March 19, | | Discount |
|---|---|---|
| 1991 | $123,900.00 x .06 | $7,434.00 |
| 1990 | 116,466.00 x .06 | 6,987.96 |
| 1989 | 109,478.04 x .06 | 6,568.68 |
| 1988 | 102,909.36 x .06 | 6,174.56 |
| 1987 | 96,734.80 x .06 | 5,804.08 |
| 1986 | 90,930.72 x .06 | 5,455.84 |
| 1985 | 85,474.88 x .06 | 5,128.49 |
| 1984 | 80,346.31 x .06 | 4,820.77 |
| 1983 | 75,525.54 x .06 | 4,531.53 |
| 1982 | 70,994.01 x .06 | 3,417.71(9months, 18 days) |
| | | $56,323.62 |

June 1,

1981 $ 67,576.38 ($123,900 - $56,323.62 = $67,576.38).

For an excellent discussion of this approach, see In Re United American Financial Corp., 55 B. R. 117 (Bkrtcy. 1985) and authorities cited therein.

Next, interest at six (6) percent per annum

must be computed back under 28 D.C. Code §3302 from June 1, 1981 until September 1, 1986. With prejudgment interest computed on the sum of $67,576.38, the total comes to $91.788.93. The computation is set foth in the following table:

| | Interest | Balance |
|---|---|---|
| 1981-1982 | $4,054.58 | $71,630.96 |
| 1982-1983 | 4,297.86 | 75,928.82 |
| 1983-1984 | 4,555.73 | 80,484.55 |
| 1984-1985 | 4,829.07 | 85,313.62 |
| 1985-1986 (3 Months June-Sept.) | 5,118.82 | 90,432.44 |

If we use a thirty (30) day month add back in three (3) days for May 29 to June 1, at a daily interest rate of $15.07 this would give us an additional sum of $45.21, for a total sum of $91,834.14.

5. Although Dr. Qureshi received an award from TELCOA in his suit against it in the amount of $17,440.00 the United States

Magistrate concludes that that amount should not be used asa set-off against the amount Dr. Qureshi is to awarded against Richard J. Gordon. Mr Gordon and TELCOA committed two separate and distinct wrongs against Dr. Qureshi. TELCOA wrongfully repossessed the telephone equipment and precluded Dr. Qureshi from repossessing the equipment as he was entitled todo as a secured party with priority. See D.C. §28:9-501- 28:9-504. In addition, Mr. Gordon, in allowing the repossession to occur by not protecting the collateral, engaged in wrongful conduct and should not be permitted to benefit from that wrong. Cf. First Pennsylvania Banking and Trust Co. v. Liberati, 422 A. 2d 1074 (Pa. 1980). Thus, Dr. Qureshi is entitled to full recovery from both TELCOA and from Richard J. Gordon and Mr. Gordon is not entitled to the benefit of any setoff.

6. Further, based on the several indicia of fraud in Richard J. Gordon's activities in his dealings with Dr. Qureshi, the United States Magistrate concludes that Dr. Qureshi is entitled to recover punitive damages. Based on the initial partnership transaction involving the purported purchase of two (2) shares of Medac II General Partnership for $20,000.00, the telephone equipment system, and the other circumstantial evidence of fraud, the Magistrate concludes that the additional sum of $25,000 as punitive damages is a reasonable sum.

Mr. Gordon's activities were in callous and wanton disregard of Dr. Qureshi's rights in investing in Mr. Gordon's business enterprises. See Al-Kazemi v. General Acceptance & Investment Corporation, et. al supra. See also Rainbolt v. Johnson, 669 F.2d 767, 769 (D.C. Cir. 1981).

7. According to term and condition number 21 of the lease, the lease provides that if the lessee defaults on the rent, the lessee "shall pay lessor all costs and expenses, including reasonable attorneys' fees incurred by lessor in exercising any of its rights of remedies hereunder." Therefore, the United States Magistrate finds that Dr. Qureshi, in exercising his right to sue Mr. Gordon under the lease, is entitled to investigators' fees and expenses and attorneys' fees in the amount of $7,600.00 based on Dr. Qureshi's testimony that he incurred these out of pocket expenses in endeavoring to locate Richard J. Gordon, to serve Mr. Gordon in this lawsuit, and in prosecuting this case. Based on the record in this case, these expenses do not appear to be excessive.

## CONCLUSION

Based on the foregoing, the Magistrate concludes that Dr. Qureshi is entitled to the following if we project judgment to be entered on or about September 1, 1986:

1) Medac II General Partnership conversion of funds. $ 26,500.00

2) Breach of Equipment Lease Rental Agreement - 118 months - Rents discounted to peresent value, plus six (6) percent per annum from June 1, 1981 amounts to $91,788.93

If we readjust back to May 29, 1981 allowing for three (3) additional days of interest at $15.07 per day, this would be $45.21, increasing the total sum to $91,834.14. 91,834.14

3) Punitive damages 25,000.00

4) Investigators' and attorneys' fees and costs 7,600.00

$150,934.14

Based on the above calculations, it is hereby RECOMMENDED that a default judgment be entered on or about September 1, 1986 in the total sum of $150,934.14.

August 15, 1986

Date

ARTHUR L. BURNETT, SR.

United States Magistrate

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| MASHUQ A. QURESHI, M.D., | Exhibit 7 |
| Plaintiff, | Civil Action |
| v. | No. 82-3673 |
| RICHARD J. GORDON, et al., | FILED |
| Defendants. | AUG. 26, 1986 |

ORDER AND JUDGMENT

This matter comes before the court pursuant to the Memorandum Opinion and Report and Recommendation of the United States Magistrate regarding damages owed plaintiff. This court ordered the Magistrate on December 13, 1985 to conduct an investigation regarding damages after it was determined that service had been made on defendant. Default was entered against defendant on February 6, 1986. The

Magistrate then conducted a hearing and received documentary and oral evidence. Plaintiff testified on his own behalf, but defendant continues not to appear personally or by counsel.

The court has carefully considered the excellent report and recommendation of the Magistrate. Plaintiff has established two transactions for which he is entitled to damages. The Matistrate had computed the present value of each amount on the date when plaintiff was entitled to payment from defendant. Interest from the date until the present has been added, as well as punitive damages and costs and fees. The court concludes that all these amounts are justified.

The court adds $100 to the recommended amount to take account of interest accrued during the month of August 1986 on the delinquent repayment of $20,000 to plaintiff.

Therefore, upon consideration of the Magistrate's report, and the entire record herein, it is, by the court, this 20th day of August, 1986.

ORDERED, ADJUDGED and DECREED that plaintiff is entitled to a judgment of $151,034.14 from defendant, to be paid no later than September 1, 1986.

Thomas Flannery

UNITED STATES DISTRICT COURT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 87

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS AND TRUST COMPANY

et al

## PROOF OF SERVICE

The petitioner certifies under the penalty of perjury that on 05/19/88, 3 copies of this sup appendix were mailed postage prepaid first class to:

1) PAUL BENNET BRAN ESQ.
Melrod, Redman & Gartlan
1801 K Street, N.W., Suite 1100K
Washington, D.C. 20006

2) CHARLES H. ACKER ESQ.
COLLINS & ACKER
1825 K Street, N.W.
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3) STANLEY LIPSHULTZ ESQ.
Lipshultz & Hone
Montgomery Center
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Petitioner
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